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Gentlemen:

On December 27, 1989 John Hamill and I held a conference call with your respective attorneys. The purpose of the call was to discuss the draft 3008(h) order for the Chempro Pier 91 facility. Several issues relating to this order have been raised which I'd like to address.

The first issue was a request for approval of the RFI workplan by the U.S. Environmental Protection Agency (EPA) prior to signature of the order. As I indicated in the call EPA cannot approve workplans prior to orders becoming effective. In many cases to do so could result in significant delays in implementation of corrective action at a site. As I indicated in the call we are willing to review the workplan as it's being developed to provide feedback on its overall completeness. However to avoid delays that could affect the facility's status on the EPA offsite list we request that the 3008(h) order be signed by both parties no later than March 15, 1990. This allows an additional 46 days for a draft RFI workplan to be developed and the elements in the order still in dispute to be resolved.

A second issue that had been raised by your contractor is the definition of facility for purposes of the RFI. For the purpose of corrective action RCRA defines a facility as all contiguous property under the owner or operator's control. Technically this could involve the entire Pier 91 operated by the Port of Seattle. Since our RFA focused only on the Chempro facility we presently are unaware of additional solid waste management units that should be addressed in the RFI. However if at any time EPA becomes aware of other areas of concern at Pier 91 these could be subject to corrective action under this 3008(h) order or other enforcement authorities of EPA or the state. Based upon our present level of knowledge for the site we recommend that the RFI not be restricted entirely to the Chempro facility. This would insure that the areas of contamination at the site are adequately characterized and that the selected corrective measures is the most appropriate for the site as a whole.

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One final issue raised is in regards to the involvement of the state in the corrective action activities at Pier 91. I have raised this issue with the state and the general consensus among the staff that I have talked to is that EPA has the lead on this site and the cleanup standards are those that are in effect at the time the order becomes effective. As you may know the model toxics standards have been controversial and have not yet been finalized. These standards when final would generally apply to newly identified sites requiring corrective action or previously identified sites where no corrective action has been completed. I appreciate your cooperation in finalization of the 3008(h) order. As you may be aware I am leaving the RCRA Compliance Section effective January 29, 1990. The new site manager is Sylvia Burges. If you have questions on this order she can be reached at 442-1254 or contact John Hamill in ORC at 442-1475.

Sincerely,

Bill Adams
RCRA Compliance Section

bcc: John Hamill, ORC
Sylvia Burges, RCS